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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 JOHN LITTLE,) CASE NO. C08-0153-MJP
09 Plaintiff,)
10 v.) REPORT AND RECOMMENDATION
11 T. BLOSS, et al.,)
12 Defendants.)
13 _____)

14 Plaintiff presents to this Court for filing a proposed civil rights complaint under 42 U.S.C.
15 § 1983. (Dkt. 1.) He names T. Bloss, Dave Oster, and Steve Thompson as defendants. Plaintiff
16 alleges his due process rights were violated when he was deprived of ten days of earned good-time
17 credits while incarcerated at Snohomish County jail. He seeks “remand” of the hearing or
18 dismissal of the violation, and an award of punitive and monetary damages. Plaintiff also
19 presented an application to proceed *in forma pauperis* (IFP). (Dkt. 4.) However, as discussed
20 below, the Court recommends that plaintiff’s application to proceed IFP be denied and this action
21 dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) based upon plaintiff’s failure
22 to adequately allege a cause of action under § 1983.

01 When a prisoner challenges the fact or duration of his confinement, his sole federal remedy
02 is a writ of habeas corpus, to which the exhaustion requirement applies. *Preiser v. Rodriguez*, 411
03 U.S. 475, 489-90 (1973); *Young v. Kenny*, 907 F.2d 874, 875 (9th Cir. 1990). Further, a civil
04 rights complaint under § 1983 cannot proceed when “a judgment in favor of the plaintiff would
05 necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be
06 dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been
07 invalidated.” *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). As more recently stated by the
08 United States Supreme Court: “[A] state prisoner’s § 1983 action is barred (absent prior
09 invalidation)--no matter the relief sought (damages or equitable relief), no matter the target of the
10 prisoner’s suit (state conduct leading to conviction or internal prison proceedings)--if success in
11 that action would necessarily demonstrate the invalidity of confinement or its duration.” *Wilkinson*
12 *v. Dotson*, 544 U.S. 74, 81-82 (2005).

13 In this case, plaintiff presents a challenge to the duration of his confinement and a finding
14 in his favor and award of the relief sought would necessarily demonstrate its invalidity. He makes
15 no allegation or showing that his confinement has been invalidated or impugned in any respect.
16 Accordingly, plaintiff’s claims are not cognizable under § 1983.¹

17 A district court should not convert a defective § 1983 claim into a petition for a writ of
18 habeas corpus unless it is clear that the plaintiff intends to bring a habeas petition. *Trimble v. City*
19 *of Santa Rosa*, 49 F.3d 583, 586 (9th Cir. 1995). Instead, the district court should dismiss the
20 § 1983 claims without prejudice. *Id.* Therefore, the Court recommends that plaintiff’s application

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22 ¹ Because plaintiff’s claims are not cognizable for the reason described above, the Court declines to address other deficiencies in plaintiff’s proposed complaint as to named defendants.

01 to proceed IFP be denied and his § 1983 action be dismissed without prejudice pursuant to
02 § 1915(e)(2)(B). *See, e.g., Blueford v. Prunty*, 108 F.3d 251, 255 (9th Cir. 1997) (affirming
03 dismissal without prejudice of claims relating to disciplinary proceedings where good-time credits
04 involved).

05 A proposed order accompanies this Report and Recommendation.

06 DATED this 21st day of February, 2008.

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09 Mary Alice Theiler
United States Magistrate Judge